FILED

MAY 29 2003

CATHY A. CATTERSON
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALASKA FOREST ASSOCIATION; CITY OF COFFMAN COVE; METLAKATLA INDIAN COMMUNITY; CONCERNED ALASKANS FOR RESOURCES & ENVIRONMENT,

Plaintiffs - Appellees,

v.

U.S. DEPARTMENT OF AGRICULTURE,

Defendant,

and

SIERRA CLUB; SITKA CONSERVATION SOCIETY; THE WILDERNESS SOCIETY,

Defendants-Intervenors - Appellants,

v.

CITY OF WRANGELL; CITY OF CRAIG; SOUTHEAST CONFERENCE; JOHN DONLEY; DOUG ROBERTS; KETCHIKAN GATEWAY BOROUGH,

Plaintiffs-Intervenors - Appellees.

No. 01-35549

D.C. No. CV-99-00013-J-JKS

MEMORANDUM*

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court
for the District of Alaska
James K. Singleton, Chief Judge, Presiding

Argued August 7, 2002; Resubmitted May 27, 2003
Anchorage, Alaska

Before: B. FLETCHER, ALARCON, and GRABER, Circuit Judges.

This is a NEPA case. The plaintiffs won their case, and the defendant (the federal government) elected not to appeal the final judgment. Before the time to appeal expired, however, the private intervenors moved in the district court to intervene as a matter of right under Federal Rule of Civil Procedure 24(a); in the alternative, if the court denied that motion, the intervenors asked for permissive intervention under Rule 24(b). The district court granted the main motion under Rule 24(a) and, therefore, did not reach the alternative request for permissive intervention. The intervenors appealed on the merits. Their appeal can proceed only if they have standing; otherwise, the appeal on the merits must be dismissed.

In Kootenai Tribe v. Veneman, 313 F.3d 1094 (9th Cir. 2002), we held that private intervenors may not intervene in a NEPA action under Rule 24(a) as a matter of right. That holding applies with equal force here. Thus, the district court's ruling under Rule 24(a) was erroneous.

We also held in Kootenai, however, that in some circumstances permissive intervention may be allowed. Id. at 1108-14. The district court did not reach this issue, but the issue was preserved. The court has not had an opportunity to consider our later-issued opinion in Kootenai or to consider whether permissive intervention may be appropriate under the criteria set out in that opinion and in our other relevant precedents. We therefore remand the case for further consideration.

REMANDED.

The parties shall bear their own costs on appeal.